IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 22ND AUGUST 2007 / 31ST SRAVANA 1929

WP(C).No. 24585 of 2007(B)

PETITIONER:

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1. PRAKASH GOLD PALACE (P) LTD
   39/358 B, POOTHULLIL HOUSE,
   IIND FLOOR, MONASTERY ROAD,
   COCHIN-11,REPRESENTED BY
   ITS AUTHORIZED SIGANATORY S.K.CHAKRABORTHY

2. KARUNDUTT SINGH (ALIAS RINGHU SINGH
   POOTHULIL HOUSE, MONASTERY ROAD, KOCHI-11.

BY ADV. SRI.A.KUMAR

RESPONDENTS:

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1. THE ASSISTANT COMMISSIONER OF INCOME
   TAX CENTRAL CIRCLE-1,ERNAKULAM.

2. THE DEPUTY COMMISSIONER OF INCOME TAX
   CENTRAL CIRCLE, I.S.PRESS ROAD, COCHIN.

3. THE CHIEF COMMISSIONER OF INCOME TAX
   COCHIN.

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI.GEORGE K. GEORGE, SC FOR IT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.24585 of 2007

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Dated this the 22nd day of August, 2007.

JUDGMENT

The petitioners are challenging the condition imposed under Ext.P9 for release of gold seized from the second petitioner which is claimed as belonging to the first petitioner. I heard counsel for the petitioners and Standing Counsel for Income Tax Department. Since adjudication proceedings is pending consequent upon seizure and taking into account the tax effect and the maximum penalty, the first respondent has demanded Bank Guarantee for full value of the gold ornaments for it's release pending adjudication. The first petitioner's case is that the ornaments belong to the company and is part of stock in trade and first petitioner is remitting massive amounts of income tax. Having regard to the contentions raised and since first petitioner's claim is admitted by second petitioner as well and since maximum rate of tax payable is 30% and even if the entire value of goods is treated as escaped income, the maximum tax and equal amount towards penalty will account for 70% of it's value and since first petitioner is an assessee, W.P. is disposed of modifying Ext.P9 directing the first respondent to release the entire goods to the petitioners on petitioners

together or first petitioner executing Bank Guarantee for 70% of the value of the goods and on both petitioners jointly executing a simple bond without surety for the balance 30% in favour of the first respondent.

C.N.RAMACHANDRAN NAIR
Judge

pms